

1       the deadline, and we've now gone to court to ask  
2       for a response. We've yet to see what that  
3       response is.

4               And that highlights another problem with  
5       the program. The permits that I commented on were  
6       draft permits a year and three or four months ago.  
7       We have yet to see a final permit. And this  
8       process has ultimately resulted in us having to  
9       file suit. And that's another -- the delay  
10      inherent in the program is another part of the  
11      problem, is that we, you know, we had a draft  
12      permit over a year ago, and we understand that  
13      we're nowhere near a final permit yet.

14             MR. HARNETT: Thank you very much for coming,  
15      and then we're taking a break now. We'll be back  
16      at 4:00 o'clock.

17   (Recess.)

18             MR. HARNETT: The next speaker is Keith  
19      Harley of the Chicago Environmental Law Clinic.

20             MR. HARLEY: Hello. Just as an initial  
21      matter, I just wanted to say a special hello to  
22      Bob and to Dick, who were on a federal advisory  
23      committee with me five years ago on the industrial  
24      combustion coordinated rule-making, and I haven't

1       seen them since, but for some reason all of a  
2       sudden that just seems like we never left.

3               I'm the director of the Chicago  
4       Environmental Law Clinic, which is a partnership  
5       between the Chicago Legal Clinic, where I'm an  
6       attorney, and Chicago-Kent College of Law, where I  
7       teach environmental law. I've represented citizen  
8       organizations in Title V permit proceedings for  
9       coal plants, peaker plants, and other industrial  
10      facilities.

11             In some cases our involvement has been  
12      limited to submitting written comments and  
13      participating in public hearings. In other cases  
14      we've petitioned the administrator and filed  
15      citizen suits based on the administrator's failure  
16      to respond to our petitions in a timely fashion.  
17      In some cases we've developed detailed  
18      environmental justice, analyses, and requests.

19             In addition, my office generated the  
20      Illinois petition that helped lead to U.S. EPA  
21      establishing a schedule for Illinois EPA to issue  
22      the first round of Title V permits. We're now  
23      monitoring Illinois EPA's schedule for issuing  
24      renewals -- that was really boring.

1           I thought I would tell you a story  
2       actually, and it was based on something that was  
3       triggered in my mind by what Kathy said, when she  
4       was reviewing a permit, a Title V permit, and she  
5       noticed a small error, but it's a very telling  
6       thing. What she noticed was that even though it  
7       was for a facility downstate, East St. Louis  
8       perhaps, it mentioned Chicago.

9           I think that one of the most important  
10      things that I've realized in representing people  
11      in Title V permit proceedings and in FOIA'ing for  
12      all of the records and reviewing all the records  
13      is that the process works beautifully and smoothly  
14      and without a hitch, and you would not be here in  
15      most cases because there is a permit application  
16      and there is a permit macro.

17           The permit writer basically cuts and  
18      pastes from the application into the permit macro,  
19      issues it in draft form. If there are no public  
20      comments, it goes out, it's issued, and everybody  
21      is happy. The water is untouched. It's a smooth  
22      process.

23           But what happens, and that story is that  
24      is the permit macro story. That is how the

1 process as a practical matter works. The permit  
2 engineer never visits the facility. If the permit  
3 application is complete, there is oftentimes, I  
4 find in FOIA'ing for the records, very little  
5 meaningful give-and-take even between the permit  
6 applicant and the agency issuing the permit.

7 The role the members of the public play,  
8 I find -- and it is very disruptive and  
9 unsettling, but it's so critically important -- is  
10 that when they get involved in the process,  
11 suddenly that juggernaut, that process that is put  
12 into place -- application, draft permit, notice,  
13 final permit -- grinds to a halt to deal with  
14 those community concerns.

15 I want to give you an example -- and I'm  
16 going to come back to it a couple times in my  
17 remarks -- we reviewed the permit application that  
18 was put in by a large industrial facility for its  
19 Title V permit, and the rote compliance  
20 certification was signed by a responsible  
21 official. I went and I met with the group that I  
22 represented in that case, and one of the women, I  
23 think she may actually be testifying this evening,  
24 Ellen Rendulich from the Citizens Against Ruining

1 the Environment group who lived on a bluff  
2 overlooking the industrial facility said, "I don't  
3 know how this facility can be in compliance  
4 because it's constantly putting out black smoke."

5 And so we FOIA'ed for the records, and  
6 we got back the excess emission reports from this  
7 facility, and do you know that consistently on a  
8 quarterly basis, like clockwork, ten days after  
9 the quarter they would be submitting reports  
10 certified under penalties of perjury to the  
11 Illinois EPA detailing hundreds of excess  
12 emissions from their facility.

13 And yet somehow there was a compliance  
14 certification in the application. The permit  
15 itself identified no outstanding compliance  
16 issues. The only compliance issues that were  
17 addressed in the permit application -- in the  
18 draft permit were on a going-forward basis; no  
19 compliance schedule.

20 And this is -- it's that juggernaut.  
21 It's that application macro, get the thing out the  
22 door, as opposed to let's take a look to see if  
23 there are excess emission reports within this  
24 agency that we should be considering, sitting in

1       this agency that we should be considering in  
2       determining whether or not we can issue an  
3       adequate Title V permit that includes a compliance  
4       schedule that gets this facility on a road to  
5       actually being in compliance with permit  
6       requirements.

7               Over and over again in my dealings with  
8       citizen groups, I find that they are the ones,  
9       through their hard work, who are asking these  
10      kinds of questions.

11             Another very, very quick example, we  
12      went into one permit hearing where our client had  
13      done a Google search and found a trade journal,  
14      and in the trade journal a vendor had put forth  
15      this incredible description of the 30-year life  
16      extension project that they had done at a  
17      facility. But if you were to look at the Title V  
18      permit application, new source review NSPS  
19      standards were not triggered at any point. And if  
20      you looked at the draft permit as a result of  
21      that, NSPS was not identified as an issue. In  
22      fact, this facility was indicated as not being  
23      subject to NSPS standards.

24             Again, it was a member of the public who

1       had to do this work, who stood up and did it. But  
2       I'll tell you how these members of the public are  
3       treated. When they do their homework, when they  
4       stand up in these permit hearings, when they  
5       develop written comments, and then when they try  
6       to go forward and say to U.S. EPA and to its state  
7       permitting counterparts, "Do your job," do you  
8       know how they're treated? They are treated like  
9       dirt in my experience.

10                Their concerns are dismissed. The  
11       responsiveness summaries are oftentimes an effort  
12       to avoid as opposed to actually substantively  
13       respond to these concerns. They go to U.S. EPA  
14       during U.S. EPA's 45-day review period and get  
15       nothing. They petition the administrator of the  
16       U.S. EPA and get no response, nothing; no response  
17       whatsoever. They file a 60-day "notice of intent  
18       to sue" letter against U.S. EPA administrator,  
19       "Please listen to this concern." They get no  
20       response.

21                Yesterday we filed two citizen suits  
22       against the administrator of the U.S. EPA, and  
23       those cases that I started off with, those are the  
24       cases. Please pay attention to these situations,

1       where citizens who could be sitting at home  
2       watching TV had decided that they care enough  
3       about their community to get involved in a  
4       situation, to do the kind of things Kathy is  
5       talking about; to go to Springfield to copy  
6       documents -- I've done that many times.

7               It's no fun -- try to read through this  
8       stuff, try to master it, like Faith was talking  
9       about; come forward with a reasoned point of view  
10      that is four-square, right down the middle of the  
11      road in terms of what Title V is doing, and here  
12      is your reward; no one will pay attention to you.  
13      You will have to fight, fight in order to try and  
14      get those concerns heard.

15             So how do we help these members of the  
16      public? How do we help these courageous people  
17      who only want to play by the rules in the Title V  
18      process? I have some very specific  
19      recommendations. In Illinois we're very lucky  
20      that we have draft permits, notices, and project  
21      summary documents that are posted on-line. Get  
22      more information on-line. Get more information  
23      on-line.

24             We know that whenever we see a notice,



1       that our next step is we need to get the  
2       application. That's everything. We need to get  
3       the application and related materials.

4               To the extent that the application can  
5       be posted on-line and these related materials can  
6       be posted on-line, it should be done. It should  
7       be done. If it is not practical to do that, or  
8       even if it is practical to do it, it is always an  
9       excellent idea for state permitting agencies to  
10      create local repositories where all the documents  
11      that could be obtained by FOIA anyway could be  
12      placed in a local library or a local school where  
13      it would be accessible to members of the public.

14             There is nothing that infuriates members  
15      of the public more than feeling there is  
16      hide-and-seek with the information that they need  
17      in order to be meaningful participants in this  
18      process. And yet oftentimes that does occur.

19             So demystify the whole process of  
20      information, and information availability, and it  
21      can't just be the draft permit. It can't just be  
22      the notice. It can't just be the project summary.  
23      Everything that is in that file that is not  
24      otherwise exempt should be available to members of

1 the public as easily as possible.

2 The second thing is -- I think you've  
3 heard this before, so I'm not going to hit this  
4 one too hard -- but if information is relevant to  
5 facility performance, that should be linked  
6 through the on-line page where draft documents are  
7 available. Members of the public should be  
8 notified about the availability of this  
9 information on enviro facts. There should be  
10 links that people could click on to get this kind  
11 of information. TRI data, AIRS/AFS data, ECHO  
12 compliance data, and also very good demographic  
13 data as well, if people are interested in new J  
14 concerns.

15 In addition, it would also be very  
16 helpful for other kinds of permit data,  
17 construction permits, all the other stuff that has  
18 been issued that is now being integrated into the  
19 Title V permit. If that information could also be  
20 freely available to members of the public, either  
21 through a computer hookup or at a place where they  
22 can see it and understand, have access to it.

23 I have a question for you. One thing I  
24 do whenever we're dealing with new sources is I

1       take a look at the draft permit and immediately go  
2       to technology transfer network and look at the  
3       BACT/RACT/LAER clearinghouse, and I'll compare  
4       permitting choices that have been made all across  
5       the country on NSR to what is being proposed in  
6       this draft permit, and I can very quickly develop  
7       a point of view as to whether or not this is, in  
8       fact, BACT or LAER.

9               There is an inventory of permitting  
10       decisions from all across the country. Does such  
11       a thing exist for Title V? Is there a national  
12       inventory of Title V permits issued for facilities  
13       that are in the same SIC code, that are in the  
14       same business, where you could actually see best  
15       permitting practices that are being done in  
16       different states. So that when I have a  
17       coal-burning power plant, and I'm trying to  
18       develop meaningful comments about what best  
19       practices might be that have already been  
20       established by another agency as best practices in  
21       that state, where I could actually point to  
22       language and say, "This would be better." Is  
23       there anything like that out there that's  
24       available at this point? I think this would be

1       useful to everyone; be useful to permit writers,  
2       to members of the public, be useful to EPA.

3               Finally, I would like this committee --  
4       in fact, I will a make a formal request, for  
5       whatever that is worth, to make a request to EPA,  
6       U.S. EPA, as to what it needs at this point in  
7       order to fulfill its legal mandate to do  
8       meaningful 45-day review when it receives a  
9       proposed permit and what it needs to do in order  
10      to respond to petitions in a timely fashion. Not  
11      according to my notion of it, but what's actually  
12      constructed into the law; the administrator shall  
13      grant or deny a petition within 60 days. It  
14      doesn't happen. There is no meaningful review  
15      within 45 days. There is no granting or denying  
16      petition within 60 days or 180 days or 240 days.

17             This committee could perform a very  
18      useful function for all of us out there, including  
19      regulated entities which would like to see their  
20      permits issued, to resolve these issues in a  
21      timely fashion, to go back to U.S. EPA and say,  
22      "You aren't doing this. What do you need in order  
23      to change your ways to meet the legal mandate?"  
24      Let them tell us, and let them tell Congress as

1 well.

2 I have three other points that I would  
3 like to make very quickly about what the  
4 priorities of Title V, I think, should be on a  
5 going-forward basis. I've identified three of  
6 them.

7 One of the issues is that the promise of  
8 Title V to actually provide a summing up of the  
9 compliance status of a facility and a schedule by  
10 which regulated facilities can come into  
11 compliance, that opportunity in Title V is largely  
12 being squandered. And the reason it's largely  
13 being squandered is because I don't believe  
14 that -- one of the comments I heard just sitting  
15 in the back of the room about permit engineers not  
16 going out and visiting facilities, it goes quite  
17 beyond that. Permit engineers not consulting with  
18 enforcement people within their own agency or  
19 within U.S. EPA, draft permits being issued, and  
20 comments from members of the public about  
21 compliance issues not being given adequate  
22 attention or leading to inspections of facilities.

23 I would love to see more established  
24 protocol, a recommendation of this committee that

1       would create best practices for how to deal with  
2       compliance issues. Now, I think it would be in  
3       our first set of permit renewals under Title V, so  
4       that that requirement has real meaning.

5               Second is MACT compliance. I heard  
6       someone say before that there is a permit issue  
7       that you have these MACT regulations hundreds of  
8       pages long. Do you want to have all of that  
9       incorporated into a Title V permit?

10              Our struggle is actually much different,  
11       and that is because the MACT requirements in  
12       Illinois and in other states are actually being  
13       rolled out. As Title V permits come up for  
14       renewal, we're finding that the opportunity to  
15       actually determine whether or not these are major  
16       sources subject to MACT standards is slipping  
17       through regulators' fingers. They're not really  
18       taking a hard look at these facilities to  
19       determine whether or not they actually should be  
20       subject to these MACT standards.

21              I could give you specific examples of  
22       where we've seen applications which are ambiguous  
23       and where we've seen Illinois EPA accept the easy  
24       way out, allowing facilities not to avoid MACT

1 regulation, but I don't have time to do that.

2 MR. HARNETT: You need to bring it to an end.

3 MR. HARLEY: Now?

4 MR. HARNETT: Yes.

5 MR. HARLEY: Okay.

6 MR. HARNETT: Thank you. I'm sorry. We're  
7 just pressed for time here.

8 MR. HARLEY: No, no. I understand. I only  
9 had one more point I wanted to make.

10 MR. HARNETT: You should really submit more  
11 to us in writing.

12 Richard Van Frank?

13 MR. VAN FRANK: Have you encountered  
14 situations where an application is out of date,  
15 like filed in 1992 and has never been updated?  
16 And if so, what would you do about an application  
17 of that type?

18 MR. HARLEY: This is a big problem.

19 Because of the delay in Illinois and in  
20 other states -- I don't want to single out  
21 Illinois EPA too much, mostly because I have to  
22 work with them every day, but I don't think  
23 they're any better or worse than anybody.

24 But this is a very, very big issue that

1 communities struggle with, that oftentimes they  
2 are dealing with applications that are from 1996,  
3 for example, and that because of the delay in  
4 issuing the permits, permit renewals, you can be  
5 dealing with 19- -- 2002, 2003 before you get to  
6 the public hearing. And while occasionally when  
7 we FOIA records, we will see that Illinois EPA has  
8 attempted to bridge the gap. More often than not  
9 people go into a public hearing without knowing  
10 too much about what the actual present status of  
11 the facility is. It makes it very, very difficult  
12 for members of the public to participate  
13 meaningfully in the proceeding, which is what they  
14 really want.

15 MR. VAN FRANK: This is not a renewal. This  
16 is the original permit.

17 MR. HARLEY: In the cases that we've dealt  
18 with in Illinois up to now, we're dealing almost  
19 entirely with the original permits. We've only  
20 just started with renewals.

21 MR. HARNETT: Verena Owen?

22 MS. OWEN: I'm curious, what was your last  
23 point?

24 MR. HARLEY: I think another issue that state



1 regulators wrestle with, U.S. EPA wrestles with,  
2 communities wrestle with, where it would be  
3 helpful to get some clear guidance is on the issue  
4 of NSR compliance in the Title V permitting  
5 context. This is a compliance issue, but we have  
6 seen situations -- I mentioned one of them when I  
7 started -- where people have come into Title V  
8 permit hearings with information that suggests  
9 that there may have been a major modification,  
10 that there appears to have been a significant  
11 increase in emissions facility usage, but there  
12 was never any NSR review for that facility.

13 We've gotten very, very different  
14 responses from state permitting agency, from U.S.  
15 EPA as to whether or not that is germane in the  
16 Title V permitting process.

17 From our point of view, it is. It is  
18 because you cannot establish the relevant emission  
19 standards unless you know whether or not this  
20 should be permitted as a new or existing source.  
21 We also think it's relevant as a compliance issue  
22 as well.

23 But that point of view is far from  
24 settled. And it would be very, very helpful to

1        know -- have a point of view obviously, about how  
2        U.S. EPA views evidence of NSR issues or NSR  
3        problems at facility, and they would be operating  
4        under the old standard in all the cases we've  
5        dealt with up to now, as how that fits into the  
6        Title V process. Maybe that could be something  
7        that this group could ask U.S. EPA to clarify.

8            MR. HARNETT: David Golden?

9            MR. GOLDEN: Keith, thank you for taking the  
10       time today to come and talk to us.

11           It sounds like you've had a lot of  
12       opportunity to review a number of Title V permits.  
13       My question is -- and this is just a gut, you  
14       know. I won't ask you for data.

15           But if you were to categorize the issues  
16       or problems that you see in the Title V permits  
17       that you've reviewed into one of two buckets, one  
18       is just the execution or implementation of Title  
19       V, maybe the reg is fine, but it's just the water  
20       is not getting to the end of the row, so to speak,  
21       it's just not getting done, versus something  
22       structural with Title V that needs to be fixed.

23           Do you have a gut of what percentage of  
24       problems do you see are execution or

1 implementation versus structural with Title V?

2 MR. HARLEY: I think implementation is where  
3 we find most of the issues that we're raising.  
4 The promise of Title V -- I have conversations  
5 with clients in the Title V context that almost  
6 always evolve into, "Yes, this is what the law  
7 says, but that's just not how it's working.  
8 That's just not how it works."

9 It may say that a compliance schedule  
10 should be included as part of this permit, but  
11 it's just not there. Or we should have received a  
12 response from the administrator within 60 days,  
13 but it's nowhere in sight.

14 So that I would say implementation is  
15 where I tend to see most of the problem.

16 Do you agree with that, by the way? Can  
17 I ask you a question?

18 MR. GOLDEN: Yeah. You mean a second  
19 question?

20 Yeah, that's where I see it; execution  
21 is everything.

22 MR. HARNETT: Shelley Kaderly?

23 MS. KADERLY: I wanted to answer a couple of  
24 your questions. First of all, on your question of

1 NSR compliance, in my state, as we were going  
2 through the Title V's, we came across so many  
3 situations where equipment went in or changes had  
4 been made without the proper construction permits,  
5 and that actually, I think, resulted in some of  
6 the delay in our ability in getting all of our  
  
7 permits done, because we were trying to go back  
8 and fix all of those problems before we got the  
9 Title V's issued. So I think it is a germane  
10 issue.

11 Also, I just wanted to echo that I agree  
12 with you on your comments about involving the  
13 compliance and enforcement staff in the Title V  
14 process. One of the things that we do is our  
15 inspectors review the permits before they do a QA  
16 review on them before they go out for public  
17 comment, and there are many times that they've  
18 been able to identify situations where the permit  
19 engineer missed something or didn't identify the  
20 equipment properly or didn't identify  
21 recordkeeping or monitoring or something properly.

22 And they also ensure that we've got  
23 enforceable conditions. So I do think that's a  
24 valuable part. It does extend our permitting

1 process, but I do think it's a value-added element  
2 to our program.

3 MR. HARLEY: What state are you from?

4 MS. KADERLY: Nebraska.

5 MR. HARNETT: Bob Palzer?

6 MR. PALZER: Thanks, Keith, for coming, and  
7 giving what I thought was a very excellent  
8 overview of somebody who obviously has spent a lot  
9 of time on this issue.

10 I liked all of your suggestions, but I  
11 guess the one that I find most appealing is your  
12 suggestion to try to take lessons, learn from the  
13 Title V process, and apply it to something like  
14 the BACT/LAER clearinghouse. I would be real  
15 curious what -- we can't do this now -- as to what  
16 the other committee members feel about this.

17 But is there any more you would like to  
18 say about how you might go about doing that that  
19 you could say in a few moments, or is that  
20 something we should just hold off till later?

21 MR. HARLEY: I am not sure how -- I think  
22 everyone around this table knows this, but the  
23 technology transfer network is maintained by the  
24 Office of Air Quality Planning and Standards in

1       Research Triangle Park. If you go to the quality  
2       transfer network, it's basically the warehouse of  
3       information that U.S. EPA uses to develop and  
4       maintain its Clean Air Act programs.

5               If you tab down, you come back to the  
6       BACT/RACT/LAER clearinghouse, you put in a SIC  
7       code or an industrial sector code, and it actually  
8       spits out the permitting decisions that have been  
9       made, including the emission standards that are  
10      appropriate. Gives you permit numbers so you can  
11      then obtain permits related to other facilities in  
12      that same category. It's a very strong tool for  
13      everyone. I think it's on there for permit  
14      writers, quite frankly, more than members of the  
15      public.

16             But if you really want to have  
17      meaningful, germane, targeted involvement by  
18      members of the public, if you've given them a tool  
19      like that, then when they see start-up, shutdown,  
20      malfunction provisions in a permit that they're  
21      concerned about, or they're wondering about  
22      compliance schedule issues, they don't have to try  
23      to generate that out of whole cloth. They could  
24      actually say, "In Nebraska they have generated

1       permits that have these provisions, and these are  
2       the kinds of provisions that we think are relevant  
3       for this type of facility in this state as well."

4               I think that has the effect of moving  
5       permits forward as well, because permit writers  
6       are actually seeing what one another are doing.

7               MR. HARNETT: Steve Hitte?

8               MR. HITTE: I just want to understand what  
9       you're saying. So to effectuate that  
10       recommendation, are you saying you would like EPA  
11       to have some ability so the public can have access  
12       to all 20,000 permits that have been issued? Is  
13       that -- is it as simple as that? Which isn't  
14       simple, by the way.

15              MR. HARLEY: I know. I'm not sure how the  
16       BACT/RACT/LAER clearinghouse came into existence.

17              MR. HITTE: There is only three or four  
18       hundred of those issued a year, so I just want to  
19       make sure I understand the volume of your  
20       questioning.

21              MR. HARLEY: There go back -- these go back  
22       many, many years. Are those posted -- maybe  
23       someone would know this better than I, but I  
24       believe that those might be posted by the permit

1 writers themselves.

2 MS. KADERLY: They're supposed to be. We're  
3 supposed to be doing that, yeah.

4 MR. HITTE: Right. Right, that's all others.

5 I just wanted to say, are you saying  
6 you'd like to see EPA house a Web site that would  
7 have all of the Title V permits issues?

8 MR. HARLEY: Yeah, I think that that would be  
9 a wonderful idea.

10 MR. HARNETT: Keri Powell.

11 MS. POWELL: Hi, Keith. Thank you for  
12 coming.

13 You spoke a lot about the need to  
14 utilize the compliance schedule aspect of Title V  
15 more effectively.

16 Have you ever seen a permit that is  
17 using the compliance schedule requirement in a way  
18 that you think is effective?

19 MR. HARLEY: No.

20 MR. HARNETT: Thank you very much for your  
21 time.

22 MR. HARLEY: Thank you.

23 MR. HARNETT: Appreciate you coming in.

24 The next speaker is Dale Kaline from